

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**FRANCIS McCLENDON,**

**Petitioner,**

**v.**

**Case No. 06-C-648**

**PAMELA WALLACE, Warden,**

**Respondent.**

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**DECISION AND ORDER**

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This matter comes before the Court on Francis McClendon's ("McClendon") petition for a writ of habeas corpus under 28 U.S.C. § 2254. On initial review, Magistrate Judge William Callahan directed the parties to address the timeliness of McClendon's petition.

The parties' submissions confirm what Judge Callahan suspected: McClendon's petition is untimely. The record reflects that McClendon's conviction became "final" on January 8, 2002, sixty days after the last transcript was served with respect to his conviction. (Docket No. 10, Exhibit A).<sup>1</sup> This was due to McClendon's failure to pursue *any* post-conviction relief in state court until October 26, 2004. (*Id.*) The one-year limitations period expired between those two dates when McClendon did absolutely nothing to pursue his claims. *See* 28 U.S.C. § 2244(d)(1)(A) ("A 1-year period of limitation shall apply . . . [which] shall run from . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review").

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<sup>1</sup> Under Wis. Stat. § 809.30(2)(h), a defendant wishing to exercise the right to post-conviction relief has sixty days after the service of transcripts to either file a notice of appeal or a motion for post-conviction relief.

In response, McClendon offers no justification for this lapse of time, so the Court need not consider whether the time period should be equitably tolled.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

McClendon's petition is **DISMISSED** as untimely.

Dated at Milwaukee, Wisconsin, this 6th day of March, 2007.

**BY THE COURT:**

s/Rudolph T. Randa

**HON. RUDOLPH T. RANDA**

**Chief Judge**